

SHB 2160 - H AMD 512

By Representative McCabe

ADOPTED 06/11/2015

1 Strike everything after the enacting clause and insert the
2 following:

3
4 "NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW
5 to read as follows:

6 (1) A person distributes an intimate image of another person when
7 that person intentionally and without consent distributes, transmits,
8 or otherwise makes available an intimate image or images of that other
9 person that was:

10 (a) Obtained under circumstances in which a reasonable person
11 would know or understand that the image was to remain private; or

12 (b) Knowingly obtained by that person without authorization or by
13 exceeding authorized access from the other person's property,
14 accounts, messages, files, or resources.

15 (2) Any person who distributes an intimate image of another person
16 as described in subsection (1) of this section and at the time of such
17 distribution knows or reasonably should know that disclosure would
18 cause harm to the depicted person shall be liable to that other person
19 for actual damages including, but not limited to, pain and suffering,
20 emotional distress, economic damages, and lost earnings, reasonable
21 attorneys' fees, and costs. The court may also, in its discretion,
22 award injunctive relief as it deems necessary.

23 (3) Factors that may be used to determine whether a reasonable
24 person would know or understand that the image was to remain private
25 include:

26 (a) The nature of the relationship between the parties;

27 (b) The circumstances under which the intimate image was taken;

1 (c) The circumstances under which the intimate image was
2 distributed; and

3 (d) Any other relevant factors.

4 (4) It shall be an affirmative defense to a violation of this
5 section that the defendant is a family member of a minor and did not
6 intend any harm or harassment in disclosing the images of the minor to
7 other family or friends of the defendant. This affirmative defense
8 shall not apply to matters defined under RCW 9.68A.011.

9 (5) As used in this section, "intimate image" means any
10 photograph, motion picture film, videotape, digital image, or any
11 other recording or transmission of another person who is identifiable
12 from the image itself or from information displayed with or otherwise
13 connected to the image, and that was taken in a private setting, is
14 not a matter of public concern, and depicts:

15 (a) Sexual activity, including sexual intercourse as defined in
16 RCW 9A.44.010 and masturbation; or

17 (b) A person's intimate body parts, whether nude or visible
18 through less than opaque clothing, including the genitals, pubic area,
19 anus, or postpubescent female nipple.

20 (6) In an action brought under this section, the court shall:

21 (a) Make it known to the plaintiff as early as possible in the
22 proceedings of the action that the plaintiff may use a confidential
23 identity in relation to the action;

24 (b) Allow a plaintiff to use a confidential identity in all
25 petitions, filings, and other documents presented to the court;

26 (c) Use the confidential identity in all of the court's
27 proceedings and records relating to the action, including any
28 appellate proceedings; and

29 (d) Maintain the records relating to the action in a manner that
30 protects the confidentiality of the plaintiff.

31 (7) Nothing in this act shall be construed to impose liability on
32 an interactive computer service, as defined in 47 U.S.C. 230(f)(2) as
33 it exists on the effective date of this section, for content provided
34 by another person."

EFFECT: Amends the Substitute House Bill by:

- Removing a requirement that distribution of certain intimate images must either intentionally or recklessly cause emotional distress;
- Requiring that a person know or reasonably should know that disclosure of an intimate image would cause harm
- Removing a minimum liability of up to \$10,000;
- Creating an affirmative defense for a defendant who is a family member of a minor and who discloses an intimate image of the minor to family or friends if he or she did not intend any harm or harassment;
- Removing depictions of a person's intimate apparel from the definition of "intimate image";
- Adding "sexual activity" to the definition of "intimate image";
- Listing genitals, public area, anus, or postpubescent female nipples as intimate body parts; and
- Requiring the court to make it known to the plaintiff as early as possible that the plaintiff may use a confidential identity in relation to the action and allows the plaintiff to use a confidential identity in all petitions, filings, and other documents presented to the court.

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